

EXHIBIT G



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March 21, 2022

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Samsung Electronics America, Inc.

ATTN: Legal Department.
85 Challenger Road,
Ridgefield Park, NJ 07660

Confidential Communication Pursuant to Federal Rule of Evidence 408, and Illinois' Rule of Evidence 408.

Re: Notice of Claims – Samsung Electronics America, Inc.'s Violations of Illinois' Biometric Information Privacy Act

Counsel:

Pursuant to Samsung Electronics America, Inc.'s ("Samsung") Terms and Conditions and End User License Agreement ("EULA") (collectively referred to as "Terms"),¹ this letter notifies Samsung that certain Illinois users are pursuing claims against Samsung for violation of Illinois' Biometric Information Privacy Act ("BIPA") by collecting biometric identifiers and biometric information from Samsung's pre-installed "Gallery" software application (hereinafter "Gallery App"). This firm is counsel to the 10,157 Samsung users listed on Exhibit A, each of whom have suffered harm to their privacy because of Samsung's BIPA violations.

Background of Claims

Samsung is the designer, manufacturer, and vendor of Samsung smartphones, tablets, and apps.² Since 2009, Samsung has sold over 2 billion "Samsung Galaxy" (formerly stylized as "Samsung GALAXY") smartphone devices and more than 50 million "Galaxy Tab" devices (collectively "Samsung Devices") within the last two years. The Samsung Galaxy product line includes the popular Galaxy S, Galaxy Note, Galaxy Z, Galaxy A (Alpha), and Galaxy M (Millennial) series.

¹ The Terms and EULA cover Samsung as a wholly owned subsidiary of Samsung Electronics Co., Ltd. *See, e.g.,* www.samsung.com/us/Legal/SamsungLegal-EULA4; www.samsung.com.

² Samsung has nearly a 30% market share of the smartphone market in the United States, and a 17.6% market share of the tablet market. Tablet Vendor Market Share United States of America (June 2021), available <https://gs.statcounter.com/vendor-market-share/tablet/united-states-of-america>. Mobile Fact Sheet, Pew Research Center (Apr. 7, 2021), available at <https://www.pewresearch.org/internet/fact-sheet/mobile/>.

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The "Samsung Gallery" software application (hereinafter "Gallery App") is the default photo and video viewer pre-installed on Samsung Devices. Through the Gallery App, Samsung Device users can view, edit, save, store, and share photos and videos through the Gallery App, which is used and recognized in Galaxy devices globally. Samsung Device users can enjoy their images and videos from anywhere in the Samsung Cloud and through cloud sync with signing into the same account, meaning the photos and videos are accessible across any device linked to the Samsung Cloud account. Images synced with Samsung Cloud are automatically sent to and saved on Samsung servers.

Samsung Captures, Collects, Stores, and Retains Biometric Identifiers and Biometric Information Without Informing Illinois Residents or Receiving Valid Consent.

Illinois enacted BIPA as an informed consent statute, specifically imposing safeguards to ensure that individuals' privacy rights and control over their biometric identifiers and biometric information are properly honored and protected. BIPA imposes liability on private entities who fail to comply with the statutory requirements. 740 ILCS § 14/1, *et seq.*³ BIPA defines "biometric identifier" to mean a "retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry." 740 ILCS § 14/5. Moreover, "biometric information" is defined as "any information, *regardless* of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual." 740 Ill. Comp. Stat. Ann. 14/10 (emphasis added).

In direct violation of BIPA, Samsung collects, uses, and stores the biometric identifiers, including face scans and faceprints, and biometric information such as facial geometry of Illinois residents without valid consent and without complying with BIPA's requirements. Samsung's BIPA violations are evidenced by: (1) the functionality of the Gallery App, (2) application and use of facial processing systems, algorithms, and facial recognition techniques; and (3) use and continued development of systems and methods that collect facial data as evidenced by numerous patents issued by the United States Patent Office ("USPTO") to Samsung discussing the use of and/or application of facial and/or face recognition technology, techniques for scanning facial geometry, and collection and use of facial geometry and related data.⁴

³ BIPA governs the retention, collection, disclosure, and destruction of biometric identifiers or biometric information, and prohibits a private company from capturing, purchasing, receiving through trade, or otherwise obtaining biometrics without first informing the subject and obtaining written consent. *See* 740 ILCS 14/15(a)-(e).

⁴ *See, e.g.,* See Patent No. US 10,666,869 B2: Image Display Apparatus and Image Display Method (May 26, 2020), ("Referring to FIG. 2 again, in operation S130, *the subject included in the captured image may be recognized through face recognition.* Whenever the image is captured, the control unit 150 may perform the face recognition on the captured image. The control unit 150 may recognize the subject included in the captured image by comparing a face of the subject included in the captured image with a database. *For example, the control unit 150 may recognize the subject included in the captured image within persons included in a contact list. The control unit 150 may separately perform the face recognition on each captured image.*...In operation S140, at

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The Samsung Devices at issue are manufactured and sold with the Gallery App pre-installed as the default photo and video viewing application. Using the Gallery App, Samsung users can create personal and shared albums, “stories,”⁵ and movies, and employ Samsung’s editing and “tagging” features.⁶ According to Samsung, the Gallery App allows Samsung Device users to save, organize, edit, share, and store their photos in one location:

The Gallery app is the perfect place to organize all of your videos and photos. Everything you capture from the camera on your phone will automatically be saved to the gallery, but you can also add in or download photos so that you can store all of your memories in the same place. If you want greater control over how your images and videos look, the Gallery has a full suite of editing options from filters and stickers to colour tools and background music.

The Gallery app can connect to the Samsung Cloud, making it really easy to share your unforgettable moments across all of your devices. You can also create shared albums so that all of your loved ones can follow along with your adventures, no matter where you are in the world.⁷

Once a photo or video is captured, Samsung automatically scans and analyzes the image and/or video frame, assigns a tag⁸ based on the object(s), face, and/or individual(s) identified, and saves it to the user’s default

least one of a tag corresponding to the recognized subject and a share button may be displayed on the camera preview screen. *The display unit 120 may display the tag corresponding to the subject recognized from the captured image* on the camera preview screen. The tag corresponding to the recognized subject may include a name, a nickname, or a photo of the recognized subject.”) (emphasis added).

⁵ *How do I use the Gallery app on my Galaxy device?* SAMSUNG, <https://www.samsung.com/uk/support/mobile-devices/how-do-i-use-the-gallery-app/> (last viewed Mar. 10, 2022) (“Stories give you everything you need to enhance your images and create something even more shareable. You can use stories in a similar way to albums, helping you to organize your image and videos but you can also use stories to turn your images into collages and GIFs.”); *see also, id.* at “Gallery Settings” (allowing users to “create stories automatically based on the faces, time, and locations of pictures and videos”)

⁶ *Id.* (According to Samsung, its editing tools include “a huge range of options including filters, stickers, doodles and colour spot”).

⁷ *How do I use the Gallery app on my Galaxy device?* SAMSUNG, <https://www.samsung.com/uk/support/mobile-devices/how-do-i-use-the-gallery-app/> (last viewed Mar. 10, 2022).

⁸ *Id.* (“The Gallery app will automatically assign tags to many of your photos by analysing what is in the image. This can help you sort through your photos, create an album of similar images or search for a specific photo.”); <https://r2.community.samsung.com/t5/Galaxy-S/camera-image-processing/td-p/4109995>.

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Gallery App. "Tagging" is accomplished through Samsung's proprietary facial processing systems and recognition technology, otherwise known as Samsung's face recognition feature, which uses an algorithm to scan images captured to detect a face. Once a face is detected, Samsung's algorithm identifies and extracts key landmark facial features, such as the location of the mouth, chin, nose, ears, eyes, and eyebrows, to calculate a unique digital representation of each face. Using this information, Samsung creates a face template based on the identified geometric attributes such as distance between the eyes and the width of the nose. The newly created face template is compared to the face templates stored in Samsung's database to identify a match, which may include individuals within the person's contact list.⁹ The Gallery App uses the face templates that are extracted from the individual's face to match, search, organize, sort, and group images of the same user into one location. This is accomplished by comparing the pre-existing face templates stored in Samsung's database to the newly extracted face template. If there is a match, the Gallery App tags the image and groups it with previously stored images depicting the same individual. Images of the same individual are "stacked" together like a deck of cards. The front of the stack displays the identified individual's face within a circular frame.

The Gallery App also employs other face scanning processes and techniques such as image analysis. Specifically, the Gallery App uses image analysis to "classify images based on what's in them, such as people, backgrounds, and objects, so you can search for them more easily" and "create stories automatically based on the faces, times, and locations of pictures and videos."¹⁰ In other words, Samsung's proprietary software and algorithms repeatedly scan and analyze photos and videos to understand and distinguish what objects, scenes, humans, animals, and landscapes are present. More importantly, the system uses the facial geometry of the individual to identify and recognize their face, automatically apply a tag, and stack the related images of that specific individual.

As the Gallery App applies facial scanning and face recognition techniques automatically to all photos and videos, Samsung Device users cannot disable the feature nor consent to its uses. Moreover, neither Samsung's privacy policy nor the Gallery App contain any type of disclosure to notify Illinois users that Samsung is generating, collecting, using, and storing their biometric information and biometric identifiers. The Gallery App also purposefully misleads users into thinking that Samsung applies non-facial recognition processes by

⁹ Patent No. US 10,666,869 B2: Image Display Apparatus and Image Display Method (May 26, 2020) ("The image display method may further include recognizing subjects included in the captured one or more images through face recognition, displaying tags corresponding to the recognized subjects and a share button on the camera preview screen, and sharing the captured one or more images in response to a touch input on the photo reel, at least one of the thumbnails, at least one of the tags, or the share button."); Patent No. US 10,129,481 B2: Image Display Apparatus and Image Display Method (Nov. 13, 2018) (same).

¹⁰ *How do I use the Gallery app on my Galaxy device?* SAMSUNG, <https://www.samsung.com/uk/support/mobile-devices/how-do-i-use-the-gallery-app/> (last viewed Mar. 10, 2022) at "Can I sync my photos across my devices?"

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disclosing its use of "image analysis" while failing to notify users that this system cannot function without repeatedly scanning their facial geometry and generating face scans.

Samsung's Violation of BIPA

Our clients are Illinois residents who are Samsung Device users that have used Samsung's Gallery App to store and organize photos and videos of themselves. As explained above, Samsung violates BIPA because it (1) scans, detects, identifies, and collects users' biometric identifiers and biometric information without consent, and (2) does not have, nor does it follow, a publicly available guideline for the retention and destruction of that data. Specifically, Samsung violated and continues to violate BIPA because it has not:

- Properly informed our clients in writing that their biometric identifiers and biometric information were and are generated, collected, stored, and disclosed;
- Properly informed our clients in writing of the specific purpose and length of time for which their biometric identifiers and information were being collected, stored, used, and/or disclosed;
- Provide and follow a publicly available retention schedule and guidelines for permanently destroying our clients' biometric identifiers and biometric information; and
- Receive a written release from our clients to collect, capture, or otherwise obtain their biometric identifiers and biometric information.

The above acts and practices constitute multiple violations of BIPA. As a result of these violations, our clients demand the following:

1. Samsung collect, store, and use our clients' biometric identifiers or information in compliance with BIPA;
2. Samsung immediately destroy the faceprints, face scan, and facial geometry of each of our clients; and
3. Samsung pay compensation for its violations of BIPA. BIPA provides for statutory damages for either \$5,000.00 for each intentional or reckless violation pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 for each negligent violation pursuant to 740 ILCS 14/20(1). Upon information and belief, Samsung's violations of BIPA were intentional or, at the very least, reckless.

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Our clients welcome the opportunity to resolve these matters amicably prior to initiating individual arbitration. If we cannot resolve these matters within 30 days of receipt of this letter, our clients will exercise their individual rights in accordance with Samsung's Terms.

We appreciate your immediate attention and cooperation in these important matters.

Sincerely yours,



Jonathan Gardner